



**NORTH DORSET
DISTRICT COUNCIL
COMMUNITY
INFRASTRUCTURE LEVY**



**SECTION 106, CIL AND
AFFORDABLE HOUSING**



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June 2016

1. Introduction

- 1.1 The Community Infrastructure Levy (CIL) and planning obligations, specifically Section 106 agreements¹ and Section 278 highway agreements², will be used together to deliver new infrastructure.
- 1.2 National planning guidance³ suggests that as background evidence to their CIL charging schedules, authorities should provide information about the amount of funding secured through Section 106 agreements in recent years. This should include information on the achievement of affordable housing targets.
- 1.3 Such information is set out in this document. Further material relating to these various matters, including affordable housing delivery, can be found in North Dorset District Council's Annual Monitoring Reports.
- 1.4 In addition, national planning guidance also looks to Councils to have a clear and transparent system for identifying what infrastructure will be funded through CIL, and in what circumstances infrastructure would be required in addition to a CIL payment, as a planning obligation. This information is provided in documents accompanying this one, specifically the Draft Regulation 123 List and the Infrastructure Delivery Plan.

¹ Section 106 of the Town and Country Planning Act (as amended).

² Section 278 of the Highways Act 1980.

³ Planning Practice Guidance, DCLG.

2. Section 106 Obligations

Planning Obligations and the Planning Guidance Note

- 2.1 Between 1998 and 2011 the Council operated a tariff-based scheme under Section 106 of the Town and Country Planning Act 1990 (as amended) based on developer contributions towards the provision of community infrastructure. The details were set out in a Planning Guidance Note (PGN)⁴. The scheme ended in 2011 when the Council's Cabinet adopted an Interim Position Statement which established that the PGN would no longer be used as a basis for seeking contributions from developers towards the projects identified in the PGN. However, as noted below contributions are still sought for affordable housing provision but on a different basis.
- 2.2 The Council took the decision in 2011 to no longer seek contributions for projects identified in the PGN for a number of different reasons including:
- the expiry of the housing provision figures in the Local Plan which ran to 31st March 2011;
 - the move from the use of the PGN as basis for collecting funds to CIL; and
 - a recognition of the need to help stimulate development at a time of significant economic downturn.
- 2.3 A summary of Section 106 contributions towards the cost of community infrastructure (that is, excluding affordable housing and highways contributions) received from 2001 to 2011 on the basis of the PGN is set out below in Table 2.

Table 2: Value of Section 106 Contributions Received 2001 - 2011 (excluding affordable housing)

Year	Contributions received
2001	£470,760.00
2002	£468,897.00
2003	£402,603.00
2004	£1,719,822.59
2005	£1,243,301.69
2006	£419,886.69
2007	£645,813.94
2008	£349,277.79
2009	£222,093.32
2010	£223,864.91
2011	£697,030.48
TOTAL	£6,863,351.41

Source: North Dorset District Council financial monitoring records

⁴ Planning Guidance Note - Planning Obligations for the Provision of Community Infrastructure, North Dorset District Council, various editions 1998 - 2011.

Planning Obligations in the Future

- 2.4 Following the establishment of 'pooling' restrictions under Regulation 123 of the original CIL Regulations, since April 2015⁵ councils have not been able to collect funds from more than five separate planning obligations for a single infrastructure project or type of infrastructure. This constrains the use of Section 106 obligations in the provision of infrastructure.
- 2.5 Section 106 obligations might still be required in the future on a case-by-case basis relating, for example, to site specific infrastructure necessary for planning permission to be granted. Their use in securing infrastructure, though, will be in much more limited circumstances than previously. Obligations⁶ may be negotiated to provide for on-and off-site community facilities and infrastructure requirements related to the development or, in the case of small developments, to provide a contribution to nearby provision. The North Dorset Local Plan Part 1 points to those situations where planning obligations may still be sought.
- 2.6 To avoid any double charging to developers, authorities that are adopting a CIL charging schedule are required to prepare and publish a list of those items or types of infrastructure it intends to fund through CIL . This is the Regulation 123 List⁷ and it is key to the operation of Section 106 obligations. The planning authority cannot then seek the provision of or contributions towards those items included in their list through Section 106 obligations.
- 2.7 The use of planning obligations is governed by the provisions of the National Planning Policy Framework⁸ (NPPF) and Planning Practice Guidance (PPG). The CIL Regulations⁹ introduced three tests for planning obligations in respect of development that is capable of being charged the CIL. These tests, incorporated into the NPPF and PPG, are that planning obligations should be:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 2.8 Contributions towards site-related highways works may still be required under Section 278 of the Highways Act 1980, irrespective of CIL provisions.

⁵The Community Infrastructure Levy (Amendment) Regulations 2014 deferred the introduction of the 'pooling' arrangements from April 2014 to April 2015.

⁶ Including Section 278 Highway obligations.

⁷ Required under Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

⁸ National Planning Policy Framework, DCLG (March 2012).

⁹ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).

3. Projected CIL Income

- 3.1 Changing economic circumstances, amongst other things, over the last few years have led to a degree of fluctuation in the numbers of housing completions recorded in the District. Table 3 below provides details of housing completions in North Dorset between 2010 and 2015.

Table 5: Housing Completions 2010 - 2015

	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	TOTAL
Market	118	247	82	107	110	664
Affordable	154	128	62	120	68	532
TOTAL	272	375	144	227	178	1196

Source: North Dorset District Council Annual Monitoring Reports 2010 - 2015.

- 3.2 Future development will be guided by the Local Plan in terms of location and type and the overall distribution of new housing over the Plan period is summarised in Table 6 below.

Table 6: Proposed Spatial Distribution of Housing Development in North Dorset 2011 - 2031

Location	Homes proposed 2011 - 2031	Proposed CIL rate (per m ²)
Blandford	At least 1,200	£30
Gillingham	At least 400*	£30*
Gillingham Strategic Site Allocation	Around 1800	£0
Shaftesbury	At least 1,140	£30
Sturminster Newton	At least 395	£30
Countryside (including Stalbridge and the Villages)	At least 825	£45

* excluding Gillingham Strategic Site Allocation

Note: Figures do not sum due to rounding.

Source: North Dorset Local Plan 2016 - 2031 Part 1.

- 3.3 Continuing uncertainty about the economic conditions which will prevail over the Plan period to 2031 means that the types of housing which will be built over that period may vary from that anticipated by the Local Plan. However, a projection of possible future CIL revenue has been undertaken which indicates that the Council might anticipate CIL receipts in the order of £4.5M to 2031¹⁰.
- 3.4 This calculation necessarily embraces a number of assumptions. The primary assumption is that the proposed CIL rates are adopted by the Council. A second

¹⁰ The projection takes account of dwellings which have already been built, are under construction or have received planning permission.

important assumption is that the affordable housing numbers embodied in the Local Plan, including starter homes and other categories of lower cost housing, will be achieved over the plan period and not provision below or above those. Thirdly, an allowance is made for the fact that an element of new residential development will be self-build or custom-build housing which will be exempt from the CIL.

4. Comparison of CIL and Section 106 contributions

- 4.1 The CIL in North Dorset will provide funding to support the provision of infrastructure which was previously funded by contributions made under the former PGN. The following Table gives an indicative comparison between the two sources of funding in respect of residential development. It is based on actual completions over a five year period and house sizes (floorspace) are derived from those completions. The table compares the PGN contributions received by the Council with a calculated notional CIL equivalent derived from the proposed rates and incorporating the same assumptions as in Section 3 above.

Table 5: Comparison of PGN Section 106 contributions and notional CIL contributions per dwelling.

	Average Completions 2006/7 - 2010/11	Average annual PGN Contributions received 2006/7 - 2010/11	Contributions per dwelling
PGN	227	£427,616	£1,884
Notional CIL	227	£385,501	£1,698

Sources: North Dorset District Council Annual Monitoring Reports 2006-2011.
North Dorset District Council financial monitoring records.

- 4.2 However, there is the prospect that CIL may capture the potential for infrastructure funding more in line with that which was achieved in the higher than average PGN contribution years. The amount of residential development taking place across the District will obviously be the most important factor in this regard. However, amongst other things, this potential may be realised by way of contributions coming from non-residential development. It is also possible that the proportion of rural dwellings, which would have a higher CIL contribution rate on the basis of the Draft Charging Schedule, will be greater than that incorporated in the notional calculation.
- 4.3 Nevertheless, taking anticipated CIL receipts in the order of £4.5M to 2031 as noted above, and setting it against the number of dwellings proposed in the Local Plan, around £1,700 per dwelling might be expected over the plan period.

5. Affordable Housing

- 5.1 National Planning Guidance states that the charging authority should assess the extent to which affordable housing targets have been met in recent years. The Council's affordable housing policy has evolved over a number of years. North Dorset has previously sought the provision of affordable housing in line with the North Dorset District-wide Local Plan (First Revision), which was adopted in 2003. Under Policy 2.4 of that Plan, which allocated sites for residential development, 'affordable housing potential' was identified for each site as a guide to the number of affordable (subsidised and low cost) dwellings to be sought on particular sites.
- 5.2 The specific affordable housing policies in the 2003 Local Plan made it clear that affordable housing would be sought with a range of provision to be discussed with developers from 22% to 42%. The overall target was 482 over the period 2003-2011 and, as Table 6 shows, this target was met.

Table 6: Affordable Housing Completions 2003/04 - 2010/11 North Dorset

	2003/4	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10	2010/11
Blandford	49	29	0	5	2	45	5	48
Gillingham	20	16	74	14	0	0	11	0
Shaftesbury	0	3	9	0	0	0	17	55
Sturminster	0	0	15	7	0	16	0	41
Stalbridge	0	0	0	0	0	10	0	4
Rural Area	11	24	20	10	23	0	8	6
District Total	80	72	118	36	25	71	56	154

Source: Annual Monitoring Reports, North Dorset District Council, 2003-2011.

- 5.3 The situation changed in 2011 when the Council adopted an Interim Position Statement¹¹ on the provision of affordable housing in the District following the Cala Homes (South) judgement in respect of the revocation of regionals strategies¹². The Council had published its Draft Core Strategy for consultation in March 2010 and decided that draft Core Policy 9: Affordable Housing and draft Core Policy 10: Affordable Housing - Rural Exception Schemes, together with their supporting text, remained an appropriate approach to the provision of affordable housing, subject to the matters identified in the preliminary review.
- 5.4 The preliminary review determined that draft Core Policy 9 was an appropriate basis for seeking contributions subject to the following modifications:

¹¹ Interim Position Statement on Affordable Housing, North Dorset District Council, January 2011.

¹² Cala Homes (South) Ltd v Secretary of State for Communities and Local Government and Winchester City Council, (2010).

- a) the provision of affordable housing should be sought on all sites with capacity to deliver three or more dwellings, including housing on mixed-use sites;
- b) within the settlement boundary of Gillingham a minimum of 30% of the total number of dwellings should be sought to be affordable; 35% affordable should be sought on any proposed urban extensions to Gillingham, subject to site-based assessments of viability;
- c) in cases where a level of affordable housing provision below the target percentages in draft Core Policy 9 is being proposed, the developer may be offered an opportunity (subject to certain requirements) to involve the District Valuer with a view to securing a mutually agreed level of affordable housing provision. In any case, where viability is an issue, an ‘open book’ approach will be sought on any viability assessment; and
- d) where a developer contribution in lieu of actual affordable housing provision is considered appropriate, the average level of grant paid by the Homes and Communities Agency in the South West region for an affordable dwelling for rent should be applied.

5.5 The review also suggested that, on an interim basis, the Council should use draft Core Policy 10: Affordable Housing – Rural Exception Schemes as a starting point for negotiations with developers for the provision of affordable housing rural exception schemes.

5.6 The table below shows the overall affordable housing completions in Dorset between 2011 and 2015. The continuing generally high level of delivery in North Dorset is clear.

Table 7: Affordable Housing Completions 2011 - 2015, North Dorset

	2011/12	2012/13	2013/14	2014/15
Blandford	42	5	37	18
Gillingham	0	0	0	0
Shaftesbury	86	48	71	41
Sturminster	0	0	0	0
Stalbridge	0	0	2	0
Rural Area	0	9	10	9
District Total	128	62	120	68

Source: Annual Monitoring Reports, North Dorset District Council, 2012-2015.

Table 8: Affordable Housing Completions 2010 - 2015, North Dorset

	2010 - 2011	2011 - 2012	2012 - 2013	2013 - 2014	2014 - 2015	2010 - 2015
Net completions	272	375	144	227	178	1196
Affordable	154	128	62	120	68	532
% affordable	57	34	43	53	38	44

Source: Annual Monitoring Reports, North Dorset District Council, 2011-2015.

- 5.7 Between 2010-2011 and 2014-2015 the Council collected almost £395,000 towards the provision of affordable housing additional to the significant levels of on-site provision achieved.
- 5.8 In January 2016 the Council adopted the North Dorset Local Plan Part 1 2011-2031 which embraces specific achievement levels for the provision of affordable housing. Policy 8 states that: *'Development that delivers eleven or more net additional dwellings and which has a maximum combined gross floorspace of more than 1,000 square metres, including housing on mixed-use sites, will contribute to the provision of affordable housing. On schemes of six to ten in Areas of Outstanding Natural Beauty, including housing on mixed-use sites, financial contributions to the provision of affordable housing will be sought. Provision sought will be 25% in Gillingham and Sturminster Newton, 30% in Shaftesbury and Blandford Forum¹³ and 40% elsewhere.'* Affordable housing may also be provided on rural exception sites.
- 5.9 Given the high levels of affordable housing provision achieved by the Council in the past, and the fact that affordable housing is exempt from the Levy, it is not anticipated that implementation of the CIL will have a detrimental impact on the delivery of affordable housing in North Dorset.

¹³ Including Blandford St Mary.